Station Casinos, Inc., Aliante Gaming, LLC, Boulder Station, Inc., d/b/a Boulder Station Hotel & Casino, Palace Station Hotel & Casino, Inc., d/b/a Palace Station Hotel & Casino *and* Local Joint Executive Board of Las Vegas, Culinary Workers Union, Local 226 and Bartenders Union, Local 165, affiliated with UNITE HERE, AFL–CIO. Cases 28–CA–023436 and 28–CA–062437

June 27, 2012

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HAYES AND BLOCK

On February 2, 2012, Administrative Law Judge Gerald M. Etchingham issued the attached decision. The Respondent filed exceptions and a supporting brief, the Acting General Counsel filed an answering brief, and the Respondent filed a reply brief. The Acting General Counsel also filed cross-exceptions and a supporting brief, the Respondent filed an answering brief, and the Acting General Counsel filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and record in light of the exceptions[1] and briefs[2] and has decided to affirm the judge's rulings, findings,[3] and conclusions and to adopt the recommended Order as modified.[4]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Palace Station Hotel & Casino, Inc., d/b/a Palace Station Hotel & Casino, Las Vegas, Nevada, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

"(a) Within 14 days from the date of this order, post at its Palace Station Hotel & Casino, Las Vegas, Nevada facility copies of the attached notice marked "Appendix"[18] in both English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means at that location.[19] Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 7, 2010."

[1] No exceptions were filed to the judge's dismissal of the allegation that the Respondent violated Sec. 8(a)(1) by interrogating and threatening employees at its Boulder Station Hotel & Casino facility, or to the judge's finding that Relief Supervisor Martin Rubio was not an agent of the Respondent.

[2] The Acting General Counsel asks that we strike a portion of the Respondent's brief in support of exceptions, asserting that it improperly includes facts not in the record. We have disregarded the assertedly offending passage and therefore find it unnecessary to formally strike it. See, e.g., *D. L. Baker, Inc.*, 351 NLRB 515, 515 fn. 2 (2007).

The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

[3] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

For the reasons stated by the judge and those that follow, we affirm the judge's finding that Rubio was not a supervisor within the meaning of Sec. 2(11) of the Act. The judge found that Rubio assigned employees to work areas but did not exercise independent judgment in doing so. In affirming the latter finding, we observe that employees bid not only on shifts, as the judge stated, but also on work areas. Moreover, the particular tasks for each work area are set by a daily checklist, and there is no evidence that Rubio had any control over these checklists. Accordingly, when Rubio assigned employees to work areas at the outset of a shift, his assignments were controlled by employees' bids, which also determined the tasks each employee would perform. Rubio therefore did not exercise independent judgment in assigning employees. Because Rubio was not a statutory supervisor (and the Acting General Counsel no longer contends in the alternative that Rubio was an agent of the Respondent), any comments Rubio made to employee Casiano Corpus could not violate Sec. 8(a)(1). We therefore find it unnecessary to pass on the Respondent's exceptions to the judge's determination that Rubio made the comments as alleged.

[4] The judge's recommended Order provides for the notice to be posted at all 18 of the Respondent's facilities in the Las Vegas area. As the only violation found occurred at the Respondent's Palace Station Hotel & Casino facility, and there is no contention that this violation affected employees at the Respondent's other facilities, we shall modify the recommended Order to provide for the notice to be posted at the Palace Station Hotel & Casino facility only. We shall also substitute a new notice to conform to the judge's findings and to the Board's standard remedial language.

"[19] For the reasons stated in his dissenting opinion in *J. Picini Flooring*, 356 NLRB 11 (2010), Member Hayes would not require electronic distribution of the notice."

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten you with discharge if you engage in activities on behalf of the Union or in other protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

PALACE STATION HOTEL & CASIO, INC., D/B/A
PALACE STATION HOTEL & CASINO

Pablo Godoy and *Larry Smith, Esqs.,* for the Acting General Counsel.

Harriet Lipkin, Esq., of Washington, D.C. and *Dianne LaRocca, Esq.,* of New York, New York, for the Respondent.

Richard McCracken, Esq., of San Francisco, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

GERALD M. ETCHINGHAM, Administrative Law Judge. This case was tried in Las Vegas, Nevada, on October 18–20, 2011. The Local Joint Executive Board of Las Vegas, Culinary Workers Union, Local 226 and Bartenders Union, Local 165, affiliated with UNITE HERE, AFL–CIO (the Charging Party or the Union) filed the charge in Case 28–CA–023436 on April 6, 2011,[1] and an initial charge in Case 28–CA–062437 on August 10, which was later amended on September 19. The Acting Regional Director for Region 28 issued the consolidated complaint (the complaint) on September 26. The complaint alleges that the Respondent Station Casinos, Inc. (Respondent or Station Casinos) violated Section 8(a)(1) of the National Labor Relations Act (the Act) on three separate occasions through threats of discharge and unlawful interrogation of its employees for their union and concerted activities.

The complaint further alleges that the Respondent violated Section 8(a)(1) of the Act by creating an impression among its employees that their union and concerted activities were under surveillance by the Respondent. Respondent filed an answer denying the essential allegations of these three claims.

As the trial commenced, the Acting General Counsel sought and I granted leave to make further clarifying allegation amendments to paragraphs 4–6 of the complaint without opposition which were further denied by Respondent. (Tr.[2] 8–10; GC Exh. 1(r).)

Unless otherwise explained, findings of fact here are based on party admissions, stipulations, and uncontroverted testimony regarding events occurring during the period of time relevant to these proceedings. On the entire record,[3] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the Acting General Counsel and Respondent on December 23, I find the following events occurred in the circumstances described below during the period relevant to these proceedings

I. FINDINGS OF FACT

A. Background Facts and Procedural Matters

This case follows on the heels of another trial involving Respondent that was conducted by Administrative Law Judge Geoffrey Carter. See *Station Casinos, Inc*., Cases 28–CA–022918, 28–CA–023089, 28–CA–023224, and 28–CA–023434, slip op. (September 22, 2011) (the earlier decision). Although my analysis does not depend on the findings that Judge Carter made in the earlier decision (which is still pending before the Board), I have incorporated portions of Judge Carter's findings at section II of his decision below because the parties stipulated they provide efficiency and economy and some useful background for the complaint allegations that are at issue in this case. (Tr. 13–27; GC Exhs. 1(p), (q), and 2.)

Uncertain as to the identity and role of the parties' witnesses as trial commenced, I took administrative notice of other factual findings beyond section II in the earlier decision, and advised the parties that they could make further arguments in their posttrial briefs seeking my reconsideration of taking notice of portions of Judge Carter's factual findings beyond those stipu-

[1] All dates are in 2011, unless otherwise indicated.

[2] For ease of reference, testimonial evidence cited here will be referred to as "Tr." (Transcript) followed by the page number(s); documentary evidence is referred to either as "GC Exh." for a General Counsel exhibit, "R. Exh." for a Respondent exhibit, "CP Exh." For Charging Party exhibit, and "Jt. Exh." for a joint exhibit between General Counsel and Respondent, followed by the exhibit number(s); reference to the posttrial briefs shall be "GC Br." for the General Counsel's brief, and "R. Br." For Respondent's brief, followed by the applicable page numbers. Charging Party did not timely file a posttrial brief.

[3] I hereby correct the transcript as follows: Tr. 240, L. 7: "Coolern" should be "Cullen;" Tr. 283, L. 14: "resent" should be "present;" Tr. 365, LL. 5–6: "Their schedule is 8:00 to 4:00 and they leave about 5:00 'til 4:00" should be "Their schedule is 8:00 to 4:00 and they leave about 5 [minutes un] til 4:00 [3:55 p.m.];" Tr. 397, LL. 13–14: "No way because they work the day shift and married to the huddle on swing shift" should be "No way because they work the day shift and Margy [Margarito] does the huddle on the swing shift."

lated by the parties.[4] (See Tr. 13–27; GC Exhs. 1(p), 1(q), and 2.)

After further consideration, I amend my oral rulings before the end of testimony and find that the witnesses involved in the earlier decision and found by Judge Carter to be involved in unfair labor practices were not the same witnesses involved in this case. Thus, any further factual findings from the earlier decision beyond the above-referenced preliminary and background facts in section II, are irrelevant to this proceeding and I do not take any further administrative notice. Accordingly, other than taking notice of section II Background and Preliminary Findings of Fact from the earlier decision at pages 3–5, I arrive at my own factual findings and legal determinations solely on the basis of the current record without further reliance on the earlier decision. See *Sunland Construction Co.*, 307 NLRB 1036, 1037 (1992) (No notice taken where no factual showing that key management witness in earlier case whose actions gave rise to an unfair labor practice was the same individual involved in the subsequent matter.). In sum, no issues here are dependent upon the earlier decision which is pending before the Board.

B. Jurisdiction

The Respondent admits, and I find that Respondent, a Nevada corporation, owns and operates various hotels and casinos in the metropolitan area of Las Vegas, Nevada, where in the 12 months ending April 6, it derived gross revenue in excess of $500,000 and purchased and received goods valued in excess of $50,000 directly from points located outside of the State of Nevada. (Jt. Exh. 1 at 1; GC Exh. 1(m) at 2–5; GC Exh. 1(o) at 2–3; GC Exh. 1(p) at 2, 5–6.) The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.[5] (Id.)

C. Labor Organization Status

Respondent admits, and I also find that the Union is a labor organization within the meaning of Section 2(5) of the Act. (Id.)

D. Alleged Unfair Labor Practices—Overview[6]

Station Casinos operates 18 casinos in Las Vegas, Nevada, two of which, the Boulder Station Hotel & Casino (Boulder) and the Palace Station Hotel & Casino (Palace), are the subject of this case. (GC Exh. 1(m) at 5–7.) The Respondent's casinos each offer some or all of the following services: hotel accommodations, food and beverage services, spa services, and gambling opportunities. (Jt. Exh. 1 at 2.) Respondent and its casinos constitute a "single employer" under the Act in that they share: (1) common ownership; (2) common management; (3) interrelation of operations; and (4) centralized control of labor relations. (Jt. Exh. 1 at 2.) Moreover, Respondent admits and I further find that Respondent and its casinos: (1) maintain and share centralized payroll, human resources, employment, recruiting, advertising, and marketing functions; (2) issue a single "Station Casino Team Member Handbook," issue the same employment and operational policies, and adopt and follow the same employment and operational practices and procedures; (3) employee who transfer from one entity to another among the group; (4) employees who retain their seniority and benefits in the event of transfer; (5) employees who may be assigned to work at one entity in order to prepare to work at another entity; and (6) employees who interact with one another among the group of entity employees. (Jt. Exh. 1 at 2–3.)

Unlike the employees at many casinos in Las Vegas (particularly those located on the Las Vegas "strip"), Station Casinos' employees are not represented by a union, and do not work under the terms of a collective-bargaining agreement. On February 18, 2010, the Charging Party set out to change that fact by kicking off a "Now or Never" union campaign to organize the workers at Station Casinos.[7] In connection with that effort, the Charging Party held organizing meetings and enlisted Station Casinos' employees to serve as union committee leaders. Union committee leaders generally were expected to encourage their coworkers to sign union cards by speaking to coworkers (at permissible times such as employee mealtimes and breaks) about the potential benefits of joining the Union. Beginning on February 19, 2010, union committee leaders wore their union buttons to work to express their support for the Union and to identify themselves to coworkers who might have questions about the Union or the organizing campaign. (GC Exh. 2 at 4.)

Station Casinos decided to respond to the Charging Party's organizing campaign with its own campaign to oppose the Union. As one component of its responsive campaign, Station Casinos began issuing flyers, or "Sound Bytes," to its managers to express the company's views about the Charging Party's organizing campaign and the disadvantages (in the company's view) of union representation. Managers were expected to read the Sound Bytes at employee meetings (called "huddles," "preshift meetings" or "Que Pasa meetings," depending on the location), and also posted the Sound Bytes on bulletin boards for employees to read. Sound Bytes generally were available in both English and Spanish, but occasionally managers verbally translated the English versions of certain Sound Bytes into Spanish when a company-provided translation was not available. Station Casinos also encouraged its managers to provide facts, opinions and examples about the disadvantages of joining a union, but did not provide any specific guidelines or parameters to managers about the types of remarks that would be appropriate. (GC Exh. 2 at 4.)

Once implemented, Station Casinos' response to the union organizing campaign produced a variety of outcomes. First, the content of some Sound Bytes prompted some employees to

[4] I find that the motion for me to take administrative notice of the earlier decision was not ripe until testimony concluded in the instant matter to fully determine whether any relevant overlap of facts and issues came into evidence in both matters.

[5] The Respondent admitted to a similar factual predicate for jurisdiction that covers Case 28–CA–062437. See GC Exhs. 1(o), 2–3.

[6] This case involves two casino locations, each of which has a distinct set of allegations and supporting evidence. I have only provided background facts in this section to offer some context for the case as a whole. The specific facts for each allegation in the complaint (organized by casino location and alleged unfair labor practice) are addressed by claim.

[7] Station Casinos received official word about the Charging Party's organizing committee petition on February 19, 2010. GC Exh. 2 at 4.

object or respond during staff meetings, at times leading to prolonged and sometimes heated exchanges between managers and employees (or between employees themselves) about the merits of union membership. In response, some Station Casinos managers prohibited certain employees from speaking at staff meetings, while other managers prohibited all employees from speaking at staff meetings, regardless of the topic.[8] Second, managers handled the Sound Bytes in different ways, including paraphrasing or translating the Sound Byte in ways that communicated a different meaning than the written statement, and adding ad-libbed comments about the Union after reading the Sound Byte. (GC Exh. 2 at 4.)

At the same time, some employees who began wearing union committee leader buttons (as well as others who engaged in union activity but did not wear a union button) began reporting a variety of alleged unfair labor practices to the Charging Party. The alleged violations in Judge Carter's case included, but were not limited to: directions to take off their union buttons while in the workplace; interrogation about their union beliefs or activities; directions to stop engaging in union activities (such as leafleting or speaking to coworkers about supporting the Union), even while on break or off duty; orders not to speak at employee meetings because of their union activities; threats of reprisal for engaging in union activity; and disciplinary action because of their union activities. (See GC Exh. 2 at 4–5.[9]) In this case, what follows are the specific factual findings at issue from the Palace and Boulder facilities.

E. Subpoena Issues

I ruled on Charging Party's petition to revoke the August 25 subpoena duces tecum and the September 28 supplemental subpoena duces tecum[10] granting the petition as to request categories 1–5 and denying the petition as to request category 6. (Tr. 34–69.) With respect to request number 6, I ordered the Union to produce photographs, postings, posters and other documents concerning any allegations of the complaint, but excluding any *Jencks* statements, interview notes and investigatory notes from Acting General Counsel. I ruled that the Charging Party's 10–12 non*Jencks* statements were to be produced immediately in response to the subpoenas due to the fact that the subpoenaed documents are limited to production to Respondent's counsel who agreed not to share their contents which takes away the risk of violating the witness' Section 7 rights or chilling their ability to be truthful. See *Smithfield Packing Co.*, 334 NLRB 34, 34–35 (2001); *Delta Mechanical, Inc.*, 323 NLRB 76, 77 (1997); and *Caterpillar, Inc.*, 313 NLRB 626, 626 (1994). I also ruled that the videotaped material was irrelevant to this matter. (Tr. 49–50.)

[8] Before communication in staff meetings was limited during the union organizing campaign, it was fairly common for employees to speak at staff meetings to, among other things, ask questions about work assignments or clarify the nature of new policies or casino promotions that were announced at the meeting. GC Exh. 2. Fn. 9 at 4.

[9] ALJ Carter sustained many but not all of the alleged unfair labor claims in the earlier decision.

[10] The two subpoenas were identical to the subpoenas drafted for use in the earlier decision. As such, the requested documents predated the events at issue in this case by almost a year.

F. The October 7, 2010 Palace Station Incident between Respondent, through Supervisor Phillips, and Its Employees

As stated above, on February 18, 2010, the Charging Party set out its union organizing efforts at Respondent. In connection with those efforts, the Charging Party held organizing meetings and enlisted Station Casinos' employees to serve as union committee leaders. At about the same time, union committee leaders wore their union buttons to work to express their support for the Union and to identify themselves to coworkers who might have questions about the Union or the organizing campaign. (GC Exh. 2 at 4.)

On October 7, 2010, Assistant Room Chef Walter Phillips (Phillips) hosted a regular huddle or meeting with swing-shift employees at approximately 4:15 p.m. (Tr. 242.) Approximately 10 to 12 employees attended this meeting, including main kitchen cook Adolfo Gaspar (Gaspar), kitchen runner Maria Susana Lopez (Lopez), and kitchen runner Martha James (James). (Tr. 242–243, 272, 296–297, 299.) Gaspar, a union committee leader, wore his union button on the chest of his uniform on October 7, 2010. (Tr. 240–242; GC Exh. 17.)

During the meeting, Phillips discussed a number of different issues related to the job duties of the employees in attendance in a variety of job functions. (Tr. 242–243, 297–298.) After he concluded his discussion, Phillips asked employees if they had any comments or questions. (Tr. 243.)

In response, Gaspar asked Phillips when "they" meaning Respondent was going to replace two departed cooks - a cook that had been terminated (Ovidio Aquino (Aquino)) and another cook and union leader who was transferred to another department. (Tr. 243.) Gaspar's question came about because his kitchen was short-handed two cooks yet the remaining three cooks were required to maintain the same level of work as had been produced by five cooks prior to the departure of the two referenced above. (Tr. 243–244.)

In response to Gaspar's questions, Phillips warned him to be quiet and that if he would not, Gaspar could be the next cook to follow Aquino, a union committee leader previously discharged by Respondent. (Tr. 244, 275–276, 298–299.) Following this discussion, no other employees asked questions or made comments. (Tr. 244–245, 299.)

G. The February 14–15, 2011 Boulder Station Alleged Incidents

On or about February 5, 2010, prior to the commencement of the Union's organizing campaign, sanitation department day-shift employee Gerardo Arroyo (Arroyo) became a union committee leader. (Tr. 312.) Arroyo has worked for Respondent for 14 years. On becoming a union committee leader, Arroyo was given a union button (worn on his work uniform each day) and began organizing employees in support of the Union. (Tr. 311–313.) Arroyo's activities in support of the Union continued through the date of trial. (Tr. 314.)

On February 14, Arroyo and two other sanitation department day-shift employees Norma Rivera (Rivera) and Daniel Sarmon (Sarmon) allegedly attended an employee preshift huddle held by Swing-Shift Sanitation Department Supervisor Margarito Garcia (Garcia) in the dish room. (Tr. 314–315.) The meeting

was conducted in Spanish. (Tr. 315.) Garcia, who arrived to the meeting holding a schedule, opened the meeting by asking employees if they had any questions or comments.

In response, Arroyo claims he raised his hand and asked Garcia why he did not schedule more employees to work when there were only 3 employees present instead of 12 employees who should have been scheduled. (Tr. 315–316.) Garcia allegedly responded to Arroyo's question by replying that he could not do anything and this was the responsibility of Sanitation Department Director Victor Favela (Favela). (Tr. 316.) Arroyo says he responded by asking Garcia why he had the employees running around while warning them not to run because they could have an accident. (Tr. 317.)

Allegedly angered by Arroyo's further questioning, Garcia purportedly slammed his hand to the table while continuing to hold onto the schedule. (Tr. 317.) Also at the meeting, Rivera then asked Garcia why he was getting upset when they were only responding to his request for comments and questions and repeated the earlier expression that the department was functioning at an insufficient staffing level. (Tr. 318–319.) Garcia is alleged to have responded by stating that it was Favela's fault. (Tr. 319.)

The following day, February 15, while Arroyo was working in the main kitchen taking out the garbage, he was approached by Favela. Favela allegedly began the conversation by asking Arroyo why he was talking behind his back and by telling Arroyo that if he wanted to say something, to say it in front of him. (Tr. 319–320.) When Arroyo responded that he did not mention Favela and that Garcia had asked them for questions and comments, Favela angrily answered back that he worked his "ass off" too. (Tr. 320.) Arroyo responded that other departments had a lot of people to work in them while the Sanitation Department did not. (Tr. 320.) Favela continued by telling Arroyo that Favela could bring in more employees and could get rid of those employees currently working one-by-one. When Arroyo asked Favela if he was threatening him, Favela addressed Arroyo using a pejorative Spanish term and responded by telling Arroyo that he could take it like he wanted and that if he did not like it, they could go outside and fight. (Tr. 320–323.)

Garcia and Favela deny having any discussions with Arroyo on February 14 or 15 as described by Arroyo. Garcia worked the swing shift and Arroyo worked the day shift and their preshift huddles did not overlap. (Tr. 364–400; R. Exhs. 8–9.)

H. The February 18, 2011 Palace Station Alleged Incident Between Martin Rubio and Casiano Corpus

On February 17, the Union held a rally in front of Respondent's Palace Station facility (Tr. 162, 201.) Casiano Corpus (Corpus) participated in the rally by carrying picket signs on the sidewalks and parking lot. (Tr. 162.) Later that evening after the rally, Corpus reported to work at 11 p.m. to begin his graveyard shift as a porter. (Tr. 183.) Later that night at midnight (Feb. 18) Martin Rubio (Rubio) reported to work as a relief supervisor over Corpus filling in for Ron Grannis (Grannis), Rubio's regular supervisor.

During his shift, while Corpus was working in his assigned area in the feast buffet, he was approached by Rubio. Rubio called Corpus into the lobby, an area outside Corpus' work area. (Tr. 168–170.) When Corpus joined Rubio in the lobby, Rubio questioned Corpus if he had gone to the rally and whether he had gone to jail. (Tr. 170.) Rubio answered back that "somebody" had told him that the next time team members pass out flyers inside Station Casinos, they will be immediately fired. (Tr. 170.) When Corpus asked Rubio who had told him this, Rubio walked away without answering. (Tr. 170.)

Of relevant interest here, Respondent hired Rubio as a porter, cleaning Respondent's facilities, and also as a relief supervisor. In February 2011, Rubio worked as a relief supervisor two graveyard shifts per week and as a porter the remainder of his workweek. (Tr. 73, 85–86, 110–111, 163.) Rubio worked as a relief supervisor to replace regular supervisors on their scheduled days off. (Id.) When working as a relief supervisor, Respondent paid him at an additional premium of 35 cents per hour. (Tr. 151.) Thus, Rubio was an hourly, dual-rate employee, and was still required to sign in and out on sign-in sheets like other hourly, nonsupervisory team members. (Tr. 138–140, 151, 207–208; GC Exhs. 7(e), 8(e).)

As a relief supervisor, Rubio's duties were limited. He did not hire, transfer, suspend, lay off, recall, promote, discharge, discipline, responsibly direct, or adjust grievances. (Tr. 124–125, 152.) Rubio did not hold team member huddles, attend supervisor meetings, sign job descriptions for supervisor and relief supervisors, inspect work, authorize overtime, and have access to company email. (Tr. 98, 113, 117, 125, 136; GC Exh. 12.) Rubio did, however, complete schedules of where team members were stationed. (Tr. 79; GC Exh. 9(a).) Rubio assigned part-time team members to tasks that needed to be completed, and when necessary, he assigned team members to perform tasks that went beyond their typical assignments. (Tr. 84, 119, 134, 173.) Rubio completed, distributed, and collected task sheets, and also distributed and collected keys and radios at the beginning of his shift. (Tr. 74, 77, 79–80, 84–85, 87–91, 99–102, 107–111, 124, 156–158, 164, 172, 176–177; GC Exhs. 9(a)–(v); GC Exhs. 10(a)–(v).) During his shift, Rubio responded to calls from other departments reporting broken glass or other biohazard spills by radioing the team member assigned to (or nearest to) the affected area to clean up the spill. (Tr. 74–75, 84–85, 94.) At the conclusion of his shift, as stated above, Rubio collected task sheets from each team member, which indicated the completed assignments for the graveyard shift. (Tr. 85, 109, 176–177; GC Exhs. 9(b)–(v); GC Exhs. 10(b)–(v).)

As a graveyard relief supervisor, Rubio was the highest-ranking, on-site employee in the internal management department. (Tr. 111, 163.) However, Rubio was not in charge of the casino's entire operation, the pit boss was in charge; and Rubio received instruction from and reported issues to him. (Tr. 111, 130, 153–154.) Nonetheless, Rubio wore a different uniform (e.g., a polo shirt) than the porters (e.g., a Station Casinos t-shirt), and team members notified Rubio when they called off sick (or left early) from their shifts, which he recorded in a logbook. (Tr. 98–99, 106, 134, 142–147, 151, 165, 185; Jt. Exh. 2; GC Exh. 14.) Rubio often times rewarded team members with Star Cards to recognize their job performance. (Tr. 125, 131–133.) Star Cards can be used to redeem items, which

must be authorized by a supervisor's signature to be redeemed. (Id.) Rubio issued about ten or fewer Star Cards to team members in the internal management department in the entire year and ten months he worked as a relief supervisor. (Tr. 131.) Although Rubio admitted that he was never given the authority to issue Star Cards, he was never disciplined for using them. (Tr. 125, 131–133.)

II. ANALYSIS

A. Credibility

The key aspects of my factual findings above with respect to the three alleged incidents and meetings between Respondent's director and supervisors and its employees incorporate the credibility determinations I have made after carefully considering the record in its entirety. The testimony concerning the two events on October 7, 2010, and February 14–15, 2011, contain sharp conflicts.[11] Evidence contradicting the findings, particularly unsupported testimony from Phillips and Arroyo, has been considered but has not been credited.

My credibility resolutions have been formed by my consideration of a witness' opportunity to be familiar with the subjects covered by the testimony given; established or admitted facts; the impact of bias on the witness' testimony; the quality of the witness' recollection; testimonial consistency; the presence or absence of corroboration; the strength of rebuttal evidence, if any; the weight of the evidence; and witness demeanor while testifying. More detailed discussions of specific credibility resolutions appear here in those situations that I perceived to be of particular significance.

I found Gaspar to be a credible witness as his demeanor at trial was impressive as he appeared confident and testified without hesitation. Gaspar has worked at Respondent for 7 years and since February 2010, has been a known union committee leader who always wore his union button at work and was supervised or managed by Chef Phillips, Chef Candace Cullen (Cullen), and Chef Tony Tillman (Tillman) in October 2010. (Tr. 240.) Gaspar's chronology of events and detailed recollection of the October 7, 2010 huddle and interaction with Phillips was quite credible especially when corroborated by testimony from subpoenaed employees Lopez, a 2-year Respondent employee, and James, a 4-year Respondent employee. I also find employees Gaspar's, Lopez's, and James' testimony particularly credible,[12] despite language difficulty,[13] over Supervisor Phillips' testimony given the fact that each of the three nonsupervisor employees testified against their own interests as they were employed at Respondent at the time of trial and must continue to face Supervisor Phillips as one of their immediate supervisors after trial.[14] See *S.E. Nichols, Inc*., 284 NLRB 556 fn. 2 (1987) (Current respondent employee's testimony more reliable because it is given against his interest to remain employed by Respondent.).

Moreover, I find that the testimony given by one of Respondent's principal witnesses, Phillips, that he did not run or speak at the October 7, 2010 swing-shift huddle directly conflicts with the testimony of the three nonsupervisory witnesses referenced above. Thus. I reject Phillips' testimony as it is outweighed by the corroborated nonsupervisor testimony referenced above and it is unworthy of belief especially when unsubstantiated by Cullen whom Phillips swore ran the October 7 huddle and spoke to Gaspar in his place.[15] (Tr. 403–407.)

I further find that the testimony of Garcia and Favela is much more believable than that of Arroyo alone after weighing the evidence, observing them testify, and reviewing the corroborating work schedules and sign-in sheet evidence. (See R. Exhs. 8 and 9.) I find that on February 14, Arroyo worked the day shift and Garcia did not. (Tr. 364–366, 397–398; R. Exh. 8.) Garcia was not physically present at Respondent to conduct a preshift huddle at 8:15 a.m. as represented only by Arroyo.

Most telling is that Garcia works the swing shift from 4 p.m.–12 a.m. and not the day shift from 8 a.m.–4 p.m. like Arroyo, Rivera, and Sarmon. This includes Garcia's schedule on February 14. Garcia's convincing testimony that on February 14 he conducted the preshift huddle meeting in Spanish at his usual time of 4:15 p.m. before approximately 10 employees, not including Arroyo, Rivera, or Sarmon, wholly contradicts Arroyo's unsupported testimony that Garcia conducted a preshift huddle meeting before Arroyo and his two coworkers at 8:15 a.m. in the morning. I draw an adverse inference from the fact that neither Rivera nor Sarmon testified to corroborate Arroyo's version of the facts. See *Douglas Aircraft Co.*, 308 NLRB 1217 (1992) (failure to call a witness "who may reasonably be assumed to be favorably disposed to the party, [supports] an adverse inference . . . regarding any factual question on which the witness is likely to have knowledge"). Moreover, if Arroyo disputed the characterization of his and his fellow workers' work schedules as compared to Garcia, he could easily have returned to hearing for redirect rebuttal testimony if work schedules on February 14 remained an issue. For these reasons, I credit Garcia and Favela's testimony and I reject Arroyo's testimony.

[11] As to the February 17–18, 2011 event, there is no factual dispute and I credit Corpus' and Rubio's factual accounts, but find them of no benefit in establishing Rubio's supervisory status or agent authority as discussed here.

[12] I disregard only James' statement on cross-examination that she agreed that at all times when Phillips and Cullen worked together that Cullen would run the preshift huddle. See Tr. 306. The weight of the evidence shows that at least on October 7, 2010, Phillips conducted and ran the preshift huddle.

[13] Gaspar was most believable when he opined that he understood English well but needed an interpreter at hearing to communicate his responses to questions.

[14] I note that Respondent points out that the recollection from Gaspar, Lopez, and James differed as to specific statements made by Chef Phillips before Gaspar asked him his staffing question. I find this inconsistency to be immaterial and most likely due to the fact that not all employees worked in exactly the same job tasks and probably focused more on Phillips' statements that had a direct effect on the employee's work duties. The testimony was consistent, however, as to Gaspar's question and Phillips' response.

[15] Though Phillips testified that Cullen no longer worked at Respondent at the time of trial (Tr. 407), there was no evidence presented by Respondent showing that her whereabouts at the time of trial were unknown and that she could not be subpoenaed to testify with reasonable effort.

B. The Respondent,Tthrough Supervisor Phillips, Threatened Its Employees with Discharge if They Continued to Engage in Concerted Activities[16]

Paragraph 6(b) of the complaint alleges that on or about October 7, 2010, the Respondent, by Walter Phillips threatened its employees with discharge if they continued to engage in concerted activities.

As to the merits of the complaint allegation, an employer violates Section 8(a)(1) when it threatens employees with job loss if they engage in union activity. *Trump Marina Hotel Casino*, 353 NLRB 921 (2009). The test for interference, restraint, or coercion is an objective one, and depends on whether "the employer engaged in conduct which would reasonably have a tendency to interfere with the free exercise of employee rights under the Act." *Santa Barbara New-Press*, 357 NLRB 452, 476 (2011); *Multi-Ad Services*, 331 NLRB 1226, 1227–1228 (2000); *Westwood Health Care Center*, 330 NLRB 935, 949 (2000).

Moreover, an employer violates Section 8(a)(1) if it communicates to employees that they will jeopardize their job security, wages, or other working conditions if they support the union. *Metro One Loss Prevention Services*, 356 NLRB 89 (2010). I have credited Gaspar's testimony over Phillips' and described above how Phillips warned Gaspar, a known union committee leader, to be quiet about work conditions and staffing shortage complaints or he might end up being discharged like Aquino, another union committee leader who was discharged previously. I have also described above Aquino's involvement with the Union and other workplace issues. I infer, in context, that Gaspar would reasonably understand Phillips' comments to mean that he should remain quiet and not involve himself in workplace issues and the Union. By threatening an employee that he risked losing his job if he engaged in union or other protected concerted activities concerning work conditions, Respondent violated Section 8(a)(1).

C. The Respondent, by Victor Favela, did not Interrogate or Threaten its Employees About Their Union and Concerted Activities or Threaten its Employees with Discharge if They Continued to Engage in Union and Concerted Activities

It is alleged in paragraphs 5(a) and (b) of the complaint that on or about February 15, Respondent, by Victor Favela "interrogated its employees about their union and concerted activities" and "threatened its employees with discharge if they continued to engage in union and concerted activities." (GC Exh. 1(r) at 2.)

As stated above in my credibility analysis, I credited the testimony of Favela and Garcia and rejected the testimony of Arroyo. By my crediting the denials of Favela and Garcia over Arroyo's version of facts from February 14–15, and the fact that Acting General Counsel did not call any other employee to corroborate Arroyo's account of the alleged events of February 14 or 15, I am finding that Acting General Counsel failed to meet its burden of proof regarding the allegations and I reject the alleged interrogation and threatening conduct claims in the complaint. Accordingly I recommend that these allegations of the complaint be dismissed.

D. Relief Supervisor Martin Rubio was not a Supervisor or Agent when He Met with Casiano Corpus on February 18, 2011

1. Rubio was not a supervisor on February 18

The Act excludes supervisors from the ambit of its protections. 29 U.S.C.A. § 152(3) (West 2012). The Act defines a "supervisor" as:

> [A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(Id.; § 152(11).) The traditional three-part test for determining supervisory status is: (1) whether the employee holds the authority to engage in any 1 of the 12 listed supervisory functions in § 152(11); (2) whether the exercise of such authority requires the use of independent judgment; and (3) whether the employee holds such authority in the interest of the employer. *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 712–713 (2001) (quoting *NLRB v. Health Care & Retirement Corp. of Ammerica*, 511 U.S. 571, 573–574 (1994)); accord: *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006).

The statutory functions listed in § 152(11) must be exercised with "independent judgment." *Oakwood*, 348 NLRB at 687. "[T]o exercise 'independent judgment' an individual must at a minimum act . . . free of control of others and form an opinion or evaluation by discerning and comparing data," with a certain degree of discretion that rises above "the routine or clerical." (Id. at 692–693.) Once the individual exercises the function with the requisite "independent judgment," the Board will accord supervisory status to the putative supervisor.

Furthermore, when an individual is engaged a part of the time as a supervisor and the rest of the time as a unit employee, the legal standard for a supervisory determination is whether the individual spends a regular and substantial portion of his/her worktime performing supervisory functions. (Id. at 694.) "Regular means according to a pattern or schedule, as opposed to sporadic substitution. (Id.)

The burden of proving supervisory authority is on the party asserting it. *Kentucky River*, 532 U.S. at 711–712; accord: *American River Transportation Co.*, 347 NLRB 925, 927 (2006).

Here, the Acting General Counsel must satisfy this burden to prevail and argues that Rubio meets the statutory definition of a supervisor under two statutory indicia of supervisor status: "assign" and "reward." (See GC Br. at 24–27.)

[16] This allegation is listed under pars. 4(b), 6(a) and (b), and 7 of the complaint.

(a) Rubio was not a supervisor as he did not exercise independent judgment when he assigned tasks to team members

The Board has "construe[d] the term 'assign' to refer to the act of designating an employee to a place (such as location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks, to an employee." *Oakwood*, 348 NLRB at 689. The assignment of an employee to a certain department, or to a certain significant overall task would qualify as "assign" within the Board's construction. (Id.) During the relevant time period, Rubio completed, distributed, and collected assignment and tasks sheets. Furthermore, Rubio was the highest-ranking internal maintenance supervisor during the graveyard shift, thus, he responded to calls from other departments reporting biohazard spills, broken glass, etc., by calling the team member assigned to (or nearest to) the affected area to address the spill. However, it is questionable whether he exercised the requisite independent judgment in assigning such tasks.

Rubio assigned team members to a specific work area, which falls within the definition of "assign" for purposes of the Act. See, e.g., *Oakwood*, 348 NLRB at 695 (charge nurses' assignment of nurses to specific geographic locations within the emergency room fall within the definition of "assign" for purposes of the Act). However, Rubio did so by distributing assignment sheets that were dictated by the team members' bidded shifts and instructions left by Rubio's supervisors and department manager. (Tr. 77, 80, 156–158; GC Exhs. 9(a), 10(a).)

Thus, Rubio's judgment with respect to this assignment duty was hardly independent or "free of control" when he acted according to a plan. See *Oakwood*, 348 NLRB at 693 (judgment is not independent if it is dictated or controlled by detailed instructions). Furthermore, when Rubio assigned keys and radios to team members, or responded to the occasional spill by radioing the team member at or near the affected area to clean it, there is no evidence suggesting that Rubio's direction involved other than routine aspects of internal maintenance, such as promptly cleaning the spill or directing someone to do it. See, e.g., *Loyalhanna Health Care Associates*, 332 NLRB 933, 935 (2000) ("There is no evidence showing that nurses' direction of aides involves other than routine aspects of patient care, such as taking residents' vital signs, assisting residents with tasks of daily living, and ensuring that care plans are followed."); see also *Shaw Inc.*, 350 NLRB 354, 356 (2007) ("Rotating essentially unskilled and routine duties among available crewmembers . . . does not involve the use of independent judgment. . . ."); *Oakwood*, 348 NLRB at 693 ("If there is only one obvious and self-evident choice, . . . or if the assignment is made solely on the basis of equalizing workloads, then the assignment is routine or clerical in nature and does not implicate independent judgment, . . ."). I find that Acting General Counsel has failed to meet its burden of proving that Rubio acted with the requisite independent judgment in exercise of his supervisor duties.

(b) Rubio was not a supervisor under the indicia of reward

"Section 2(11) requires only the possession of authority to carry out the operation of an enumerated supervisory function, not its actual exercise[;][thus], the evidence must suffice to show that such authority actually exists and that its exercise requires the use of independent judgment." *Barstow Community Hospital*, 352 NLRB 1052, 1053 (2008) (citing *Avante at Wilson*, 348 NLRB 1056, 1057 (2006)).

It is uncontested that Rubio rewarded team members with Star Cards. (Tr. 125, 131–133.) Rubio testified that he issued Star Cards to team members who had not been recognized by a supervisor, even though Respondent never gave Rubio the authority to do so, and Rubio knew that he did not have such authority. Id. Merely because Rubio exercised the authority to issue Star Cards, does not necessarily entail that he possessed it, especially when Respondent has shown that he did not. Moreover, I find that Rubio having issued only about ten or fewer unauthorized Star Cards in the entire year in the 10 months he worked as a relief supervisor is too isolated and insufficient to establish that he possessed the supervisory authority to reward employees. See *Commercial Fleet Wash, Inc.*, 190 NLRB. 326, 326 (1971) ("[W]e do not consider these few isolated instances, in view of the record as a whole, to be sufficient to establish that they possess the supervisory authority contemplated by Section 2(11) of the Act."). Lastly, Rubio testified that he only issued Star Cards to team members who were not recognized by supervisors; that is, Rubio rewarded team members pursuant to a "routine or mechanical" criterion instead of an actual evaluation and comparison of the team member's overall job performance. Thus, Rubio has demonstrated that he did not use independent judgment to reward team members. Consequently, Rubio does not meet the statutory definition of supervisor under the indicia of "rewards."

(c) Secondary indicia of supervisory status are insufficient to establish supervisory status

The Board has held that secondary indicia of supervisory status are not dispositive without evidence of at least one statutory indicator of such status. *Juniper Industries*, 311 NLRB 109, 1010 (1993). Assuming, arguendo, that the issues of whether Rubio possessed the authority to "assign" or "reward" were closer, there still is a lack of sufficient secondary indicia of supervisory status to establish such status. First, even as a relief supervisor, Rubio was required to sign in and out like other hourly employees. Furthermore, Rubio never held supervisory huddles, disciplined employees, authorized overtime, inspected other team members' work, or performed regular porter duties in addition to responding to calls. Lastly, even though Rubio was the only on-site internal management supervisor during the graveyard shift, the pit boss was in charge of the operations of Respondent's business during the graveyard shift and Rubio would receive instructions from him and occasionally go to him with issues as they arose. (Tr. 111, 130, 153–154.) Consequently, these factors outweigh other secondary indicia, including the indicia that Rubio wore a different uniform when working as a relief supervisor (though not a full-time supervisor's uniform), or that he held a supervisor's title, or that he logged employees' absences in a logbook (which is merely clerical

work). See *Victoria Partners*, 327 NLRB 54, 61 (1998) ("status of a supervisor under the Act is determined by an individual's duties, not by his title or job classification"). Consequently, the secondary indicia are insufficient to establish supervisory status in the absence of one of the enumerated functions. E.g., *In re Palagonia Bakery Co.*, 339 NLRB 515, 535 (2003).

2. Rubio was not an agent within the meaning of the Act

An employer can be held liable for the acts of its agents even if the alleged agent is not a supervisor within the meaning of the Act. E.g., *Solvay Iron Works, Inc*., 341 NLRB 208, 210 (2004). Employers are responsible for the actions of their agents according to common law agency principles. *In re D&F Industries*, 339 NLRB 618, 619 (2003). "If the employee acted with the apparent authority of the employer with respect to the alleged unlawful conduct, the employer is responsible for the conduct." (Id.) Apparent authority is found when employer manifests to a third party "'a reasonable basis for the latter to believe that the [employer] has authorized the alleged agent to perform the acts in question.'" (Id.) (Quoting *Cooper Industries*, 328 NLRB 145 (1999)). The test is "whether, under all the circumstances, the employee would reasonably believe that the alleged agent 'was reflecting company policy and speaking and acting for management.'" (Id.) "The burden of proving an agency relationship exists is on the party asserting its existence." *In re Cornell Forge Co.*, 339 NLRB.733, 733 (2003). Furthermore, "[t]he agency must be established with regard to the specific conduct that is alleged to be unlawful." (Id.)

"The Board considers the position of the employee in addition to the context in which the behavior occurred" to determine whether the alleged agent had the apparent authority to make the act in question. *Pessoa Construction Co.*, 356 NLRB 1253, 1255 (2011) (quoting *Jules V. Lane*, 262 NLRB 118, 119 (1982)). Here, the alleged conduct occurred when Rubio was acting as a relief supervisor. Rubio was the sole supervisor in the internal management department, overseeing 16 other team members. He also wore a distinct uniform from the porters, even though he also performed half of his shift doing duties of porters alongside team members. However, Rubio never held supervisory huddles with team members, attended supervisor and/or management meetings, inspected other team members' work, authorized overtime, or disciplined or terminated team members when he was the relief supervisor, those 2 days per week. Compare *D&F Industries, Inc*., 339 NLRB at 619 (employees represented themselves as agents of management because they administered the employer's policies regarding overtime and time off, enforced rules concerning restroom time, talking, and tardiness, employee's relayed management information and decisions pertaining to the production and work rules to employees on a daily basis). Under these circumstances, an employee could not reasonably perceive that Rubio was an agent of management, instead Rubio could have been perceived as a nonstatutory supervisor overseeing the routine and clerical aspects of the internal management supervisor position, two nights per week, when the other supervisors and managers were on their days off.

Although Rubio was Respondent's agent for many purposes, such as passing out work assignments, Rubio was not Respondent's agent when he allegedly threatened Corpus with termination for his union activities. See *Pessoa Construction Co*., 356 NLRB at 1255–1256 (finding that an employee was the employer's agent for many purposes, but not for the alleged unlawful conduct). The Acting General Counsel failed to meet its burden in proving that Respondent either authorized Rubio to make such an interrogation and/or threat, or that Respondent created such a belief among its employees. When Rubio allegedly told Corpus that "somebody told him that next time we hand out flyers inside the Station Casinos, we will immediately get fired[,]" (Tr. 168, 170), Rubio never identified that the "somebody" was management. The alleged threat is vague and was not linked to Respondent in any way or any of Respondent's manifestations authorizing Rubio to make such statements. Instead, Rubio could have simply been satisfying his own curiosity and/or reiterating rumors shared among other employees. Secondly, aside from this isolated incident, Rubio has not engaged in Respondent's alleged antiunion campaign to give rise to a reasonable belief that he was the agent of management in such unlawful conduct.

In conclusion, Rubio was not a supervisor within the meaning of the Act. Although he assigned tasks and rewarded team members, Acting General Counsel has failed to prove that Rubio exercised independent judgment in doing so. Furthermore, Rubio was not Respondent's agent when he allegedly interrogated and threatened Corpus with termination for participating in union activities. Under all of the circumstances, Rubio's lack of, inter alia, disciplinary power, inability to authorize overtime, and lead supervisory huddles, do not give rise to a reasonable belief that he had the apparent authority to engage in such conduct.

Accordingly I recommend that these allegations of the complaint be dismissed.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By threatening Adolfo Gaspar on October 7, 2010, with discharge if he continued to complain about his work conditions and did not remain quiet, the Respondent violated Section 8(a)(1) of the Act by threatening an employee that he risked losing his job if he engaged in union and other protected concerted activities.
4. Respondent's unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.
5. The above violation is an unfair labor practice within the meaning of the Act.
6. The Respondent did not also violate the Act as further alleged in the complaint.

REMEDY

Having found that the Respondent has engaged in an unfair labor practice, I find that it must be ordered to cease and desist from engaging in such conduct in the future and to take certain affirmative action designed to effectuate the policies of the Act. To remedy the Respondent's violation of Section 8(a)(1) of the

Act, I shall recommend that the Respondent post and abide by the attached notice to employees.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended.[17]

ORDER

The Respondent, Station Casinos, Inc., Las Vegas, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with discharge if they engage in union or other protected concerted activities.

(b) Unlawfully in any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed to them by Section 7 of the National Labor Relations Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this order, post at its facilities in and around Las Vegas, Nevada, copies of the attached notice marked "Appendix"[18] in both English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.[19] In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 7, 2010.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

[17] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[18] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[19] The notice posting language provided here (specifically regarding distributing notices electronically) is consistent with the Board's recent decision in *J. Picini Flooring*, 356 NLRB 11 (2010).